

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

WENDY JUSTIZ,

Plaintiff,

vs.

VIRGIN AMERICAN AIRLINES,

Defendant.

Case No. 2:13-cv-00145-JCM-GWF

ORDER

Application to Proceed in Forma
Pauperis (#1) and Screening of
Complaint

This matter comes before the Court on Plaintiff Wendy Justiz's ("Plaintiff") Application to Proceed in Forma Pauperis (#1), filed on January 28, 2013.

Plaintiff's Complaint alleges claims of racial discrimination against her employer Virgin Airlines. Plaintiff represents that she "recently filed a cause with the EEOC," but has not attached a right-to-sue letter from the EEOC to her Complaint.

DISCUSSION

I. Application to Proceed In Forma Pauperis

Plaintiff filed this instant action and attached a financial affidavit to her Application and Complaint as required by 28 U.S.C. § 1915(a). Having reviewed Plaintiff's financial affidavit under section 1915, the Court finds that Plaintiff is unable to pre-pay the filing fee. Therefore, Plaintiff's request to proceed in forma pauperis in federal court is granted.

II. Screening the Complaint

Upon granting a request to proceed in forma pauperis, a court must additionally screen a complaint pursuant to 28 U.S.C. § 1915(e). Specifically, federal courts are given the authority to dismiss a case if the action is legally frivolous, fails to state a claim upon which relief may be

1 granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §
2 1915(e)(2). Under Federal Rule of Civil Procedure 8(a)(2), a complaint must contain “ a short and
3 plain statement of the claim showing that the pleader is entitled to relief[.]”

4 Plaintiff seeks relief for alleged racial discrimination in violation of Title VII, 42 U.S.C. §
5 2000e *et seq.* Title VII requires Plaintiff to exhaust her administrative remedies before filing a
6 lawsuit. *Surrell v. California Water Service Co.*, 518 F.3d 1097, 1104 (9th Cir. 2008). A person
7 seeking relief under Title VII must first file a charge with the EEOC within 180 days of the alleged
8 unlawful employment practice. *Id.*; *see also* 42 U.S.C. § 2000e–5(e)(1). If the EEOC does not
9 bring suit based on the charge, the EEOC must “notify the person aggrieved” that she can file suit.
10 *Id.* § 2000e–5(f)(1). Notice is accomplished through a right-to-sue letter. *Surrell*, 518 F.3d at
11 1104. Once a person receives an EEOC right-to-sue letter, she then has 90 days to file a lawsuit.
12 *See id.*; *see also* 42 U.S.C. § 2000e–5(f)(1). Here, Plaintiff represents she has filed a complaint
13 with the EEOC, but has not attached a right-to-sue letter to her Complaint. The Court therefore
14 finds that Plaintiff has not exhausted her administrative remedies.

15 In the event Plaintiff obtains a right-to-sue letter and elects to proceed in this matter by
16 filing an amended complaint, she is informed that the Court cannot refer to a prior pleading to
17 make her amended complaint complete. Local Rule 15-1 requires that an amended complaint be
18 complete in itself without reference to any prior pleading. This is because, as a general rule, an
19 amended complaint supersedes the original complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
20 1967). Once Plaintiff files an amended complaint, the original pleading no longer serves any
21 function in the case. Therefore, in an amended complaint, as in an original complaint, each claim
22 and the involvement of each defendant must be sufficiently alleged.

23 **IT IS HEREBY ORDERED** that Plaintiff’s Application to Proceed In Forma Pauperis
24 (#1) is **granted**. Plaintiff shall not be required to pay the \$350.00 filing fee.

25 **IT IS FURTHER ORDERED** that Plaintiff is permitted to maintain this action to
26 conclusion without the necessity of prepayment of any additional fees or costs or the giving of
27 security therefor. This Order granting leave to proceed in forma pauperis shall not extend to the
28 issuance of subpoenas at government expense.

3 **IT IS FURTHER ORDERED** that Plaintiff's Complaint is **dismissed** without prejudice
4 for failure to exhaust administrative remedies.

5 **IT IS FURTHER ORDERED** that Plaintiff shall have until **May 14, 2013** to file an
6 amended complaint, in the event she receives a right-to-sue letter from the EEOC.

7 DATED this 15th day of February, 2013.

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GEORGE FOLEY, JR.
United States Magistrate Judge